

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY,
AS CONSERVATOR FOR THE FEDERAL
NATIONAL MORTGAGE ASSOCIATION
AND THE FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Plaintiff,

-against-

NOMURA HOLDING AMERICA, INC.;
NOMURA ASSET ACCEPTANCE
CORPORATION; NOMURA HOME
EQUITY LOAN, INC.; NOMURA CREDIT
& CAPITAL, INC.; NOMURA SECURITIES
INTERNATIONAL, INC.; RBS SECURITIES
INC. (f/k/a GREENWICH CAPITAL
MARKETS, INC.); DAVID FINDLAY;
JOHN MCCARTHY; JOHN P. GRAHAM;
NATHAN GORIN; and DANTE LAROCCA,

Defendants.

No. 11 CIV. 6201 (DLC)

**DECLARATION OF JONATHAN C. ESER IN SUPPORT OF PLAINTIFF FHFA'S
MEMORANDUM OF LAW IN OPPOSITION TO NOMURA'S MOTION TO
EXCLUDE THE EXPERT TESTIMONY OF JOHN A. KILPATRICK, PH.D.**

JONATHAN C. ESER hereby declares:

1. I am an attorney with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Plaintiff Federal Housing Finance Agency ("FHFA") in the above-captioned matter.

2. I respectfully submit this declaration in support of Plaintiff FHFA's Memorandum of Law in Opposition to Defendants' Motion to Exclude the Testimony of Donald Epley.

3. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition of Margaret Demopolis, which was taken in *FHFA v. HSBC North America Holdings, Inc., et al.*, No. 2011-cv-6189 (S.D.N.Y.) on May 22, 2014.

4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the deposition of James DePalma, which was taken in this action on November 15, 2013.

5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the deposition of Jacqueline Doty as corporate representative for CoreLogic, pursuant to Federal Rule of Civil Procedure 30(b)(6), which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on June 12, 2014.

6. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition of Teresita Duran as corporate representative for Ocwen Financial Corp., pursuant to Federal Rule of Civil Procedure 30(b)(6), which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on April 30, 2014.

7. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the deposition of Donald R. Epley, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 8, 2014.

8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the deposition of Donald R. Epley, which was taken in this action on October 30, 2014.

9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the deposition of Jerry A. Hausman, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 30, 2014.

10. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition of Michael Hedden, which was taken in this action on November 21, 2014.

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the deposition of Hans Isakson, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on June 19, 2014.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the deposition of Hans Isakson, which was taken in this action on November 7, 2014.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the deposition of Lee Kennedy, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 25, 2014.

14. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the deposition of Lee Kennedy, which was taken in this action on November 5, 2014.

15. Attached hereto as Exhibit 13 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on June 30, 2014.

16. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 1, 2014.

17. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 14, 2014.

18. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on July 15, 2014.

19. Attached hereto as Exhibit 17 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in this action on November 13, 2014.

20. Attached hereto as Exhibit 18 is a true and correct copy of excerpts from the deposition of John Kilpatrick, which was taken in this action on November 14, 2014.

21. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the deposition of Frank Lucco, which was taken in *FHFA v. HSBC North America Holdings, Inc.*, No. 2011-cv-6189 (S.D.N.Y.) on August 12, 2014.

22. Attached hereto as Exhibit 20 is a true and correct copy of excerpts from the deposition of Frank Lucco, which was in *FHFA v. HSBC North America Holdings, Inc.*, No. 2011-cv-6189 (S.D.N.Y.) on August 13, 2014.

23. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the deposition of Pamela Mandigo, which was taken in *FHFA v. HSBC America Holdings, Inc.*, No. 2011-cv-6189 (S.D.N.Y.) on April 28, 2014.

24. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from the deposition of Brett Marvin, which was taken in this action on November 19, 2013.

25. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the deposition of Elizabeth Moylan, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on April 11, 2014.

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from the deposition of Donald Paul, which was taken in *FHFA v. HSBC America Holdings, Inc.*, No. 2011-cv-6189 (S.D.N.Y.) on May 9, 2014.

27. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from the deposition of Menachem Sabo, which was taken in this action on December 5, 2013.

28. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from the deposition of Christopher Scampoli, which was taken in this action on November 26, 2013.

29. Attached hereto as Exhibit 27 is a true and correct copy of excerpts from the deposition of Glenn Willoughby, which was taken in *FHFA v. Goldman Sachs & Co.*, No. 2011-cv-6198 (S.D.N.Y.) on March 28, 2014.

30. Attached hereto as Exhibit 28 is a true and correct copy of a weighting sensitivity analysis, which was marked as deposition exhibit number 54505 to the July 8, 2014 deposition of Donald Epley.

31. Attached hereto as Exhibit 29 is a true and correct copy of a numbered version of the March 2005 Uniform Residential Appraisal Report, (“URAR”) Fannie Mae Form 1004, which was marked as deposition exhibit number 58101 to the October 30, 2014 deposition of Donald Epley.

32. Attached hereto as Exhibit 30 is a true and correct copy of an analysis mapping URAR fields to USPAP, which was marked as deposition exhibit number 58102 to the October 30, 2014 deposition of Donald Epley.

33. Attached hereto as Exhibit 31 is a true and correct copy of an analysis mapping URAR fields to USPAP, which was marked as deposition exhibit number 58103 to the October 30, 2014 deposition of Donald Epley.

34. Attached hereto as Exhibit 32 is a true and correct copy of an analysis mapping URAR fields to USPAP, which was marked as deposition exhibit number 58104 to the October 30, 2014 deposition of Donald Epley.

35. Attached hereto as Exhibit 33 is a true and correct copy of the December 2002 version of One-Unit Residential Appraisal Field Review Report, Freddie Mac Form 1032, which was marked as deposition exhibit number 62104 to the November 21, 2014 deposition of Michael Hedden.

36. Attached hereto as Exhibit 34 is a true and correct copy of the March 2005 version of One-Unit Residential Appraisal Field Review Report, Freddie Mac Form 1032, which was marked as deposition exhibit number 62105 to the November 21, 2014 deposition of Michael Hedden.

37. Attached hereto as Exhibit 35 is a true and correct copy of Genworth Financial, Inc.'s Appraisal Review Checklist, which was marked as deposition exhibit number 62106 to the November 21, 2014 deposition of Michael Hedden.

38. Attached hereto as Exhibit 36 is a true and correct copy of "Using Multiple Regression Analysis in Real Estate Appraisal," 69 *The Appraisal Journal* 4 (Oct. 2001), which was marked as deposition exhibit number 40605 to the June 19, 2014 deposition of Hans Isakson.

39. Attached hereto as Exhibit 37 is a true and correct copy of DataQuick's DataQuick CMV-Portfolio White Paper, which was marked as deposition exhibit number 41213 to the July 25, 2014 deposition of Lee Kennedy.

40. Attached hereto as Exhibit 38 is a true and correct copy of AVM Validation Calculations, which were marked as deposition exhibit number 41218 to the July 25, 2014 deposition of Lee Kennedy.

41. Attached hereto as Exhibit 39 is a true and correct copy of *AVMs: 101 - A Guide to Automated Valuation Models* by James A. Kirchmeyer, which was marked as deposition exhibit number 58302 to the November 5, 2014 deposition of Lee Kennedy.

42. Attached hereto as Exhibit 40 is a true and correct copy of an AVMetrics report titled "WaMu National AVM Test," which was marked as deposition exhibit number 58303 to the November 5, 2014 deposition of Lee Kennedy.

43. Attached hereto Exhibit 41 is a true and correct copy of the Expert Report of John A. Kilpatrick, Ph.D. Concerning Adherence of Appraisals to Appraisal Standards and Practice, dated May 15, 2014.

44. Attached hereto Exhibit 42 is a true and correct copy of the Greenfield Credibility Assessment Model Source Code, Appendix 4-1a to the Expert Report of John A. Kilpatrick, Ph.D. Concerning Adherence of Appraisals to Appraisal Standards and Practice, dated May 15, 2014.

45. Attached hereto Exhibit 43 is a true and correct copy of the Greenfield Advisors Residential Data Inspection Protocol, Appendix 4-2 to the Expert Report of John A. Kilpatrick, Ph.D. Concerning Adherence of Appraisals to Appraisal Standards and Practice, dated May 15, 2014.

46. Attached hereto Exhibit 44 is a true and correct copy of Examination of Credible Appraisals, Appendix 6-2 to the Expert Report of John A. Kilpatrick, Ph.D. Concerning Adherence of Appraisals to Appraisal Standards and Practice, dated May 15, 2014.

47. Attached hereto Exhibit 45 is a true and correct copy of the Expert Report of John A. Kilpatrick, Ph.D. Concerning Accuracy of Appraisals, dated May 15, 2014.

48. Attached hereto Exhibit 46 is a true and correct copy of the Greenfield Automated valuation Model, Appendix 5-1 to the Expert Report of John A. Kilpatrick, Ph.D. Concerning Accuracy of Appraisals, dated May 15, 2014.

49. Attached hereto Exhibit 47 is a true and correct copy of Sample Nomura Loan Breakdown, Appendix 6-1 to the Expert Report of John A. Kilpatrick, Ph.D. Concerning Accuracy of Appraisals, dated May 15, 2014.

50. Attached hereto Exhibit 48 is a true and correct copy of the Expert Report of Donald Epley, Ph.D., MAI, CCIM Concerning the Credibility Assessment Model, dated May 15, 2014.

51. Attached hereto Exhibit 49 is a true and correct copy of the Supplemental Expert Report of John A. Kilpatrick, Ph.D. Concerning Sorting of Greenfield AVM Results by Defendant Sample Subject Sales, dated June 27, 2014.

52. Attached hereto Exhibit 50 is a true and correct copy of the Expert Report of Hans R. Isakson, Ph.D., dated August 14, 2014.

53. Attached hereto Exhibit 51 is a true and correct copy of the Expert Report of Lee Kennedy, dated August 14, 2014.

54. Attached hereto Exhibit 52 is a true and correct copy of the Expert Report of John A. Kilpatrick, Ph.D., dated October 6, 2014.

55. Attached hereto Exhibit 53 is a true and correct copy of the Revised Expert Report of Charles D. Cowan, Ph.D. Regarding Extrapolation, dated October 7, 2014.

56. Attached hereto Exhibit 54 is a true and correct copy of the Rebuttal Expert Report of John A. Kilpatrick, Ph.D., dated November 10, 2014.

57. Attached hereto Exhibit 55 is a true and correct copy of Exhibit 40 to the Declaration of Charles Cipione on Support of Plaintiff's Motion for Partial Summary Judgment on Defendants' Due Diligence and Reasonable Care Defenses, dated November 10, 2014.

58. Attached hereto Exhibit 56 is a true and correct copy of Exhibit 17 to the Declaration of David N. Mishol, Ph.D. in Opposition to Plaintiff's Motion for Partial Summary

Judgment on Defendants' Due Diligence and Reasonable Care Defenses, dated December 2, 2014.

59. Attached hereto Exhibit 57 is a true and correct copy of the 2005 Edition of the *Uniform Standards of Professional Appraisal Practice*.

60. Attached hereto Exhibit 58 is a true and correct copy of the 2014-2015 Edition of the *Uniform Standards of Professional Appraisal Practice*.

61. Attached hereto Exhibit 59 is a true and correct copy of GADGET Protocol – External Obsolescence.

62. Attached hereto Exhibit 60 is a true and correct copy of GADGET Protocol – Physical Depreciation.

63. Attached hereto Exhibit 61 is a true and correct copy of GADGET Protocol – Subject History.

64. Attached hereto Exhibit 62 is a true and correct copy of the March 2005 version of the Uniform Residential Appraisal Report, Freddie Mac Form 70.

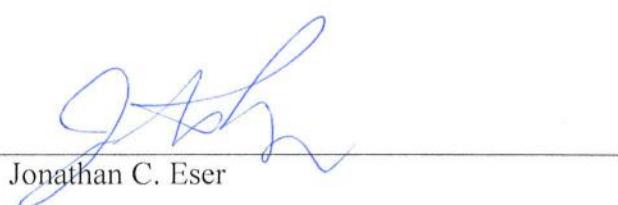
65. Attached hereto Exhibit 63 is a true and correct copy of excerpts from the thirteenth edition of *The Appraisal of Real Estate* .

66. Attached hereto Exhibit 64 is a true and correct copy of the Expert Report of Charles Grice, dated July 9, 2014.

67. Attached hereto Exhibit 65 is a true and correct copy of Appendix 5 to the Rebuttal Expert Report of John A. Kilpatrick, Ph.D., dated October 10, 2014.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: Washington, D.C.
December 19, 2014

By: 
Jonathan C. Eser